IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

MFA.No. 946 of 2001()

OPMV.1471/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT: PETITIONER

KARTHIAYANI, W/O REGHU
PANIKKAVEETTIL HOUSE, RAMAVARMAPURAM
KUTTUMUKKU, (NEAR CHERUMUKKU TEMPLE)
THRISSUR DISTRICT

BY ADV. SRI.P.V.CHANDRA MOHAN
SRI.T.VENUGOPALAN

RESPONDENTS: RESPONDENTS
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1. T.P.SUBHAS, S/O PETER
THARAYIL HOUSE,
POOTHOLE P.O, THRISSUR DISTRICT

2. SUDHEESH C.B, S/O BHASKARAN
CHELLARI HOUSE, PERINGANDOOR
MUNDOOR P.O, THRISSUR DISTRICT

3. K.G.GOPINATH, KADANMKANDATH HOUSE
KANAKKATH LANE, THRISSUR
(REMOVED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER AS PER ORDER DATED 13-7-2007 IN I.A. 1438/2007)

4. RAMANKUTTY, S/O KUNJU
KULANGARA HOUSE
VALLISSERI, AVINISSERI
THRISSUR DISTRICT

5. THE ORIENTAL INSURANCE CO.LTD
BRANCH OFFICE, GURUVAYUR ROAD
KUNNAMKULAM

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.GEORGE THOMAS
SRI.MATHEWS JACOB

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A No.946 of 2001

Dated this the 5th day of September 2007

JUDGMENT

The appellant is the claimant in O.P MV) 1471/1998 on the file of the Motor Accident Claims Tribunal, Trichur. The appellant sustained injuries at about 8 p.m. on 6-5-1998, while he was travelling with her husband in an autorickshaw bearing Regn No. KL8 C 3625. The collision took place between the autorickshaw in which she was travelling and the authorickshaw bearing Regn No. KL8J 3257 which came from the opposite side. The appellant filed original petition claiming compensation impleading the owner and driver of the auto rickshaw which came from the opposite side and also the owner and driver of the autorickshaw in which she was travelling. No oral evidence was adduced. Relying on a statement made by the appellant in Ext.A1 FI Statement, the Tribunal came to conclusion that the accident occurred due to the negligence of the driver of the autorickshaw which came from the opposite side. It directed the owner of that vehicle to pay the compensation. The Tribunal exonerated the owner, driver and insurer of the autorickshaw in which the appellant was travelling. Challenging that award this M.F.A. is filed.

2. The learned counsel for the respondent has argued that the Tribunal went wrong in finding that the accident occurred due to the negligence of the autorickshaw which came from the opposite side. It is

submitted that in the F.I.Statement it was stated that, at the place of accident the road lies east to west. The appellant was travelling from east to west and the other autorickshaw coming from west to east and hit the auto rickshaw in which she was travelling. The scene mahazar which is prepared immediately after the accident shows that the accident occurred 30 c.m south of the northern tarred road which conclusively shows that the autorickshaw in which the petitioner was travelling went to the extreme wrong side and hit against the autorickshaw. owned by the 2nd respondent.

3. It is argued by the counsel for the appellant that the appellant was under shock on account of the accident and of the injuries sustained by her. She had only affixed the signature to the statement prepared by the police without knowing the contents of the F.I.Statement. It is argued that the Tribunal ought to have given an opportunity to the appellant to explain the correct state of facts.

4. The evidence discussed above shows that, the contents of the scene mahazar is against the statement contained in Ext.A1 F.I.Statement. So it is only just and proper that the petitioner is given one more opportunity to give oral evidence to substantiate her contention. For that purpose that case has to go back .

5. In the result, the appeal is allowed. The award passed by the

Tribunal is set aside and the matter is remanded to the trial court for fresh disposal in accordance with law after affording both sides an opportunity to adduce further fresh evidence if so advised. Being an old case the Tribunal shall make every endeavour to dispose of the case as expeditiously as possible, at any rate, within three months from the date of first appearance of parties.

K.PADMANABHAN NAIR, JUDGE

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